

ESTTA Tracking number: **ESTTA126157**

Filing date: **02/21/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | Ecolab Inc. |
| Granted to Date of previous extension | 02/21/2007 |
| Address | 370 Wabasha Street North Saint Paul, MN 55102 UNITED STATES |
| Attorney information | Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-0910 UNITED STATES sjohnston@merchantgould.com, slindemeier@merchantgould.com Phone:(612) 332-5300 |

Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 78802314 | Publication date | 10/24/2006 |
| Opposition Filing Date | 02/21/2007 | Opposition Period Ends | 02/21/2007 |
| Applicant | Aloia, Roland C. 13620 Mesa Sol Drive Yucaipa, CA 92399 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 005.

All goods and services in the class are opposed, namely: Animal feed additive for use as a nutritional supplement; Animal feed supplements; Antimicrobial preparations for inhibiting microbiological decomposition in food, beverages, animal feed and pharmaceuticals; Bee pollen for use as a dietary food supplement; Calcium supplements; Dietary food supplements; Dietary supplemental drinks; Dietary supplements; Food supplements; Food supplements, namely, anti-oxidants; Ground flaxseed fiber for use as a dietary supplement; Herbal supplements; Homeopathic supplements; Lecithin for use as a dietary supplement; Meal replacement and dietary supplement drink mixes; Mineral nutritional supplements; Mineral supplements; Nutraceuticals for use as a dietary supplement; Nutritional additives for use in foods and dietary supplements for human consumption; Nutritional supplements; Nutritional supplements in lotion form sold as a component of nutritional skin care products; Nutritionally fortified beverages; Powdered nutritional supplement drink mix; Soy protein for use as a nutritional ingredient in various powdered and ready-to-drink beverages; Vitamin and mineral supplements; Vitamin fortified beverages; Vitamin supplement in tablet form for use in making an effervescent beverage when added to water; Vitamin supplements; Wheat for use as a dietary supplement

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| Attachments | 2007 02 21 Notice of Opposition.pdf (5 pages)(44911 bytes) |
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| | |
|-----------|-------------------|
| Signature | /SWJ/ |
| Name | Scott W. Johnston |
| Date | 02/21/2007 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|------------------|---|-------------------------------|
| Ecolab Inc., |) | |
| |) | Opposition No. _____ |
| Opposer, |) | |
| |) | Mark: ENDURADE |
| v. |) | |
| |) | Serial No.: 78/802,314 |
| Roland C. Aloia, |) | |
| |) | Filing Date: January 30, 2006 |
| Applicant. |) | |
| _____ |) | Published: October 24, 2006 |

NOTICE OF OPPOSITION

Ecolab Inc., a Delaware corporation, located at Ecolab Center, 370 North Wabasha Street, St. Paul, Minnesota 55102 (hereinafter “Opposer”), believes it will be damaged by the registration of the mark shown in Application Serial No. 78/802,314, filed January 30, 2006, by Roland C. Aloia (hereinafter “Applicant”), located at 13620 Mesa Sol Drive, Yucaipa, California 92399, and hereby opposes registration of the mark. The grounds for opposition are as follows:

1. Applicant's mark published for opposition on October 24, 2006. Opposer filed and the Board approved extensions of time to oppose Applicant's Mark until February 21, 2007. This Notice of Opposition is timely filed.

2. Opposer is the owner of Registration No. 2,426,651, issued February 6, 2001, for the mark ENDURE for “skin care products, namely, healthcare personnel hand wash, moisturizing lotion, and a surgical hand wash scrub, for use in health care facilities,” in International Class 3, and “skin care products, namely, antibacterial skin cleanser and and [sic] waterless antimicrobial hand rinse, for use in health care facilities,” in International Class 5.

3. Opposer has been using the mark ENDURE since at least as early as March 29, 1999.

4. Opposer has advertised and promoted its ENDURE mark continuously and extensively. Opposer has also made substantial sales of products under said mark. As a result of such continuous use and promotion, Opposer's ENDURE mark has developed and represents valuable goodwill inuring to the benefit of Opposer.

5. Applicant is seeking to register the mark ENDURADE in connection with "Animal feed additive for use as a nutritional supplement; Animal feed supplements; Antimicrobial preparations for inhibiting microbiological decomposition in food, beverages, animal feed and pharmaceuticals; Bee pollen for use as a dietary food supplement; Calcium supplements; Dietary food supplements; Dietary supplemental drinks; Dietary supplements; Food supplements; Food supplements, namely, anti-oxidants; Ground flaxseed fiber for use as a dietary supplement; Herbal supplements; Homeopathic supplements; Lecithin for use as a dietary supplement; Meal replacement and dietary supplement drink mixes; Mineral nutritional supplements; Mineral supplements; Nutraceuticals for use as a dietary supplement; Nutritional additives for use in foods and dietary supplements for human consumption; Nutritional supplements; Nutritional supplements in lotion form sold as a component of nutritional skin care products; Nutritionally fortified beverages; Powdered nutritional supplement drink mix; Soy protein for use as a nutritional ingredient in various powdered and ready-to-drink beverages; Vitamin and mineral supplements; Vitamin fortified beverages; Vitamin supplement in tablet form for use in making an effervescent beverage when added to water; Vitamin supplements; Wheat for use as a dietary supplement," in International Class 5.

6. There is no issue of priority concerning Application Serial No. 78/802,314 since Opposer has used and registered its ENDURE mark prior to Applicant's January 30, 2006, filing date. Opposer adopted and commenced use of Opposer's ENDURE mark as a trademark long before Applicant adopted or used the ENDURADE mark. Opposer's usage of the term ENDURE as a trademark commenced at least as early as March 29, 1999, nearly seven (7) years prior to the filing date of Applicant's application for its ENDURADE mark. Opposer therefore has priority over Applicant with respect to the marks at issue.

7. Applicant's ENDURADE mark is composed of Opposer's ENDURE mark with the term "ADE" immediately following Opposer's ENDURE mark. In Application Serial No. 78/802,314, Applicant presents "Endur" in lower case letters, with "ADE" in capital letters.

8. Applicant's ENDURADE mark is strikingly similar in sight, sound and commercial impression to Opposer's ENDURE mark. Moreover, presentation of the mark as "EndurADE" emphasizes the similarity of the mark to Ecolab's ENDURE mark.

9. Applicant's alleged goods are nearly identical to and related to Opposer's goods marketed and sold by Opposer in connection with its ENDURE mark, and for which Opposer owns a registration. Both parties' products include lotions and skin care products. Applicant offers nutritional supplements in lotion form and other skin care products and Opposer offers moisturizing lotion, hand wash, and hand rinse products to ordinary consumers.

10. Upon information and belief, Opposer's and Applicant's products are sold in the same channels of trade to the same consumers or class of consumers.

11. Due to the similarity between Applicant's claimed mark, ENDURADE, and Opposer's previously used ENDURE mark, the identical nature of the goods of the respective parties, customers and potential customers are likely to believe that Applicant's products

originate from Opposer, resulting in a likelihood of confusion in the marketplace, and damage to Opposer.

12. The use and registration by Applicant of the mark ENDURADE for Applicant's goods is likely to cause confusion or to cause mistake or deception in the trade, and among purchasers and potential purchasers, with Opposer's previously used ENDURE mark, again resulting in damage to Opposer.

13. Because of the identical nature of the goods, and the similarity of the marks, use and registration of the term ENDURADE by Applicant is likely to cause confusion, mistake, or deception that Applicant's goods are those of Opposer, or are otherwise endorsed, sponsored, or approved by Opposer for use with Opposer's products causing further damage to Opposer.

14. Registration of the mark shown in Application Serial No. 78/802,314 will result in damage to Opposer under the provisions of Section 2 of the U.S. Trademark Act, 15 U.S.C. Section 1052, pursuant to the allegations stated above.

WHEREFORE, Opposer asks that its opposition to this application be sustained and that registration of the term ENDURADE for the goods set forth therein be refused.

Please direct all correspondence to:

Scott W. Johnston
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910

Opposer herein appoints Heather J. Kliebenstein; William D. Schultz; John A. Clifford; Gregory C. Golla; Andrew S. Ehard; and Christopher J. Schulte, of the firm of Merchant &

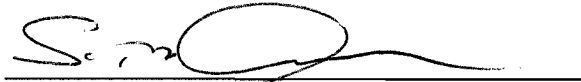
Gould P.C., its attorneys to transact all business in the U.S. Patent and Trademark Office relating to this matter with full power of substitution.

Respectfully submitted,

ECOLAB INC.

By its Attorneys,

Date: 2-21-07

A handwritten signature in black ink, appearing to read "Scott W. Johnston", written over a horizontal line.

Scott W. Johnston

Heather J. Kliebenstein

MERCHANT & GOULD P.C.

80 South Eighth Street, Suite 3200

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(612) 332-5300